

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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6	TIMOTHY EPPS,)	No. C 08-02731 CW (PR)
7)	
8	Petitioner,)	ORDER GRANTING RESPONDENT'S
9)	MOTION TO DISMISS HABEAS CORPUS
10	v.)	PETITION
11)	
12	MIKE EVANS, Warden,)	(Docket no. 6)
13)	
14	Respondent.)	
15)	

INTRODUCTION

Petitioner Timothy Epps, a state prisoner incarcerated at Salinas Valley State Prison, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court ordered Respondent to show cause why the writ should not be granted. Respondent filed a motion to dismiss for untimeliness. Petitioner filed an opposition, and Respondent filed a reply. Having considered the papers submitted, the Court GRANTS Respondent's motion to dismiss.

PROCEDURAL BACKGROUND

In 2001, Petitioner was convicted by an Alameda County jury of seventeen counts of criminal conduct relating to a violent home invasion robbery in Piedmont, a grand theft in San Leandro, and a string of robberies at Oakland businesses. He was sentenced to state prison for ninety-three years to life. He filed an appeal in the California Court of Appeal. On July 25, 2003, the appellate court rejected most of Petitioner's claims, but found that the trial court had erred in two respects. First, the trial court had

1 not properly evaluated Petitioner's objection to the prosecutor's
2 alleged discriminatory exercise of peremptory challenges during
3 jury voir dire, in violation of People v. Wheeler, 22 Cal. 3d 258
4 (1978), and Batson v. Kentucky, 476 U.S. 79 (1986). Second, the
5 trial court had incorrectly sentenced Petitioner to ninety-three
6 years to life in prison, when the correct sentence should have been
7 eighty-six years to life. The appellate court remanded the matter
8 to the Alameda County Superior Court for reconsideration of the
9 peremptory challenge objection and correction of the sentencing
10 errors. The superior court found that the prosecutor had not
11 exercised peremptory challenges in a discriminatory manner. The
12 superior court also reduced Petitioner's prison sentence from
13 ninety-three years to life to eighty-six years to life. The
14 appellate court affirmed the judgment, as modified, on October 19,
15 2005.

16 Petitioner filed a petition for review in the California
17 Supreme Court in November, 2005. The state supreme court denied
18 review without comment on January 4, 2006. Petitioner does not
19 allege that he sought review in the United States Supreme Court,
20 and there is no evidence that he filed any other pleadings in state
21 court to challenge his convictions.

22 Petitioner claims that he was "unable to react upon his case
23 after the state remedies because of his confinement in state
24 Corcoran SHOE,"¹ where he alleges that his legal materials were
25 "misplaced" by the prison staff. (Opp'n at 2.) Petitioner asserts
26 that he was in the SHU from April 6, 2006 until March 8, 2007.
27 (Id.)
28

¹ The Court assumes Petitioner is referring to the Security Housing Unit (SHU) at Corcoran State Prison.

1 On May 20, 2008,² 867 days after the state supreme court
2 denied his petition, and 439 days after leaving the SHU, Petitioner
3 filed the present federal habeas petition. The petition was file
4 stamped by the Clerk of the Court on May 30, 2008.

5 DISCUSSION

6 The Antiterrorism and Effective Death Penalty Act (AEDPA)
7 imposes a statute of limitations on petitions for a writ of habeas
8 corpus filed by state prisoners. Petitions filed by prisoners
9 challenging non-capital state convictions or sentences must be
10 filed within one year of the latest date on which: (A) the judgment
11 became final after the conclusion of direct review or the time
12 passed for seeking direct review; (B) an impediment to filing an
13 application created by unconstitutional state action was removed,
14 if such action prevented the petitioner from filing; (C) the
15 constitutional right asserted was recognized by the Supreme Court,
16 if the right was newly recognized by the Supreme Court and made
17 retroactive to cases on collateral review; or (D) the factual
18 predicate of the claim could have been discovered through the
19 exercise of due diligence. 28 U.S.C. § 2244(d)(1)(A)-(D).

20 However, "[t]he time during which a properly filed application for
21 state post-conviction or other collateral review with respect to
22 the pertinent judgment or claim is pending shall not be counted
23

24 ² A pro se federal or state habeas petition is deemed filed on
25 the date it is delivered to prison authorities for mailing. See
26 Saffold v. Newland, 250 F.3d 1262, 1268 (9th Cir. 2001), vacated and
27 remanded on other grounds, Carey v. Saffold, 536 U.S. 214 (2002)
28 (holding that a federal or state habeas petition is deemed filed on
the date the prisoner submits it to prison authorities for filing,
rather than on the date it is received by the court). May 20, 2008
is the date the federal petition was signed and the earliest date that
the petition could have been delivered to prison authorities for
mailing. For the purposes of this discussion, the Court deems that
the petition was filed on that date.

1 toward any period of limitation." Id. § 2244(d)(2).

2 Although § 2244(d) states that the limitations period
3 commences on "the date on which the judgment became final by the
4 conclusion of direct review or the expiration of the time for
5 seeking such review," direct review includes the ninety-day period
6 in which the petitioner may file for a writ of certiorari in the
7 United States Supreme Court. See Bowen v. Roe, 188 F.3d 1157 (9th
8 Cir. 1999). Therefore, Petitioner's state judgment became final on
9 April 4, 2006. Accordingly, Petitioner was required to file his
10 federal habeas petition no later than April 4, 2007. See
11 § 2244(d). His petition filed on May 20, 2008, more than thirteen
12 months after the limitations period had expired, is untimely absent
13 either delayed commencement of the limitations period or equitable
14 tolling.

15 Petitioner argues for delayed commencement pursuant to
16 § 2244(d)(1)(B). Under § 2244(d)(1)(B), the statute of limitations
17 in habeas proceedings does not begin to run until "the date on
18 which the impediment to filing an application created by state
19 action in violation of the Constitution or laws of the United
20 States is removed, if the applicant was prevented from filing by
21 such state action." To delay the commencement of the limitations
22 period, the petitioner must show a causal connection between the
23 unlawful impediment and his failure to file a timely habeas
24 petition. Bryant v. Arizona Attorney General, 499 F.3d 1056, 1060
25 (9th Cir. 2007) (where petitioner did not know about AEDPA's
26 statute of limitations, his lack of access to case law interpreting
27 the statute of limitations is not an impediment under
28 § 2244(d)(1)(B) because it was petitioner's lack of knowledge of

1 the statute of limitations, and not his lack of access to case law,
2 that caused him to delay filing).

3 Petitioner contends that the prison staff's actions amounted
4 to a state-created impediment to the filing of his federal habeas
5 petition. The few cases applying § 2244(d)(1)(B) have focused
6 almost exclusively on the conduct of state prison officials who
7 deny inmates access to legal materials, thus interfering with their
8 ability to prepare and file habeas petitions. See Whalem/Hunt v.
9 Early, 233 F.3d 1146 (9th Cir. 2000) (en banc); Egerton v.
10 Cockrell, 334 F.3d 433 (5th Cir. 2003). "These cases comport with
11 the plain meaning of [§ 2244(d)(1)(B)], which applies when a
12 petitioner has been impeded from filing a habeas petition."
13 Shannon v. Newland, 410 F.3d 1083, 1087 (9th Cir. 2005)(emphasis in
14 original). Nonetheless, even if Petitioner was entitled to a
15 delayed commencement of the limitations period under
16 § 2244(d)(1)(B), his petition would still be untimely. More than
17 fourteen months elapsed between Petitioner's release from the SHU
18 on March 8, 2007 and his filing of the federal habeas petition on
19 May 20, 2008. Petitioner provides no explanation for his delay
20 during this period, which exceeds the one year statute of
21 limitations.

22 Although Petitioner rests his opposition solely on grounds of
23 delayed commencement, the Court considers whether he is entitled to
24 equitable tolling.

25 The one-year limitations period can be equitably tolled
26 because § 2244(d) is a statute of limitations, not a jurisdictional
27 bar. See Calderon v. United States District Court (Beeler), 128
28 F.3d 1283, 1288 (9th Cir. 1997), overruled in part on other grounds

1 by Calderon v. United States Dist. Court (Kelly), 163 F.3d 530 (9th
2 Cir. 1998) (en banc). "When external forces, rather than a
3 petitioner's lack of diligence, account for the failure to file a
4 timely claim, equitable tolling of the statute of limitations may
5 be appropriate." Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir.
6 1999). Equitable tolling will not be available in most cases
7 because extensions of time should be granted only if
8 "'extraordinary circumstances' beyond a prisoner's control make it
9 impossible to file a petition on time." Beeler, 128 F.3d at 1288
10 (citation omitted). The prisoner must show that "the
11 'extraordinary circumstances' were the cause of his untimeliness."
12 Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003) (citations
13 omitted).

14 Petitioner alleges that he was unable to file his federal
15 habeas petition timely because he was housed in the SHU for almost
16 a year. His sole explanation for his claim is that the prison
17 staff misplaced his legal materials while he was in the SHU. This
18 implies that he gained access to his legal materials after he left
19 the SHU. Thus, even if the statute of limitations were tolled for
20 the time he was housed in the SHU, his petition would still be
21 untimely because, as mentioned above, more than one year elapsed
22 after he was released from the SHU.

23 Accordingly, the Court GRANTS Respondent's motion to dismiss
24 the federal petition as untimely.

25 CONCLUSION


26 For the foregoing reasons,
27 Respondent's motion to dismiss the petition (docket no. 6) is
28 GRANTED. This action is DISMISSED WITH PREJUDICE.

1 The Clerk shall terminate all pending motions, enter judgment,
2 and close the file.

3 This Order terminates Docket no. 6.

4 IT IS SO ORDERED.

5 DATED: 9/30/09



CLAUDIA WILKEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY EPPS,

Plaintiff,

v.

MIKE EVANS et al,

Defendant.

Case Number: CV08-02731 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 30, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Timothy Epps T-16535
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: September 30, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

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